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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Technical Requirements to Enable Blocking of Video Programming based on Program Ratings	)	ET Docket No. 97-206
	)	
Implementation of Sections 551(c), (d) and (e) of the Telecommunications Act of 1996	)	

COMMENTS OF MEDIA ACCESS PROJECT AND THE CENTER FOR DEMOCRACY AND TECHNOLOGY

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TABLE OF CONTENTS

SUMMARY

To clarify an ambiguity in the Commission's *Notice of Proposed Rulemaking," ("NOPR")* MAP and CDT ask that the Commission unambiguously declare that:

> ***the term "apparatus designed to receive television signals" as used in Section 551(c) of the Telecommunications Act of 1996 ("the Act")***
>
> ***1. applies only to devices capable of receiving video programming which***
>
> ***a. is received from broadcast television stations, low power television stations, television translator and booster stations, Multipoint Distribution Services, Direct Broadcast Satellite Services, cable television systems or open video systems; and***
>
> ***b. contains a vertical blanking interval; and***
>
> ***c. includes on its vertical blanking interval ratings signals transmitted pursuant to Section 551(b)(1) of the Act or such voluntary ratings systems as the Commission may recognize pursuant to Section 551 (e)(1) of the Act;***
>
> ***and***
>
> ***2. does not apply to computers and other devices without over-the-air television reception capability, to computers sold without monitors, or to 'plug-in' circuit boards.***

Section 551 requires installation of so-called "V-chips" in TV sets. The law governs manufacture of television sets, not computers. It is motivated by concerns about the broadcast medium, not the Internet. The Commission should disavow suggestions in the *NOPR* which might appear to expand the scope of Section 551.

Their remarkable potential to enhance free expression makes the new digital interactive media - best typified by today's Internet - deserving of the highest level of First Amendment protection and freedom from regulation. The broad language of the *NOPR* appears to extend the "V-chip" from the broadcast media into the new and wholly different new digital interactive media. New digital interactive media have different characteristics which make the "V-chip" particularly inappropriate. Regulating them is more likely to thwart the ultimate goals of Congress in promoting the "V-chip," and is contrary to the clearly expressed will of Congress regarding

regulation of the Internet.

The United States Supreme Court has ruled that the Internet - the most familiar manifestation of the new interactive digital media - is a "a unique and wholly new medium of worldwide human communication" entitled to the highest degree of protection under the First Amendment.

Leaving aside the certain unconstitutionality of the application of a scheme like that contained in Section 551 to computers and to unregulated data networks, it would be for Congress, and not the FCC, to attempt a Quixotic venture of that nature. The language of the statute, Congressional intent underlying its enactment, the statutory scheme of Section 551, and the overall policy objectives of the 1996 Act all preclude the Commission from stretching it to encompass devices which might have incidental similarity to, and/or secondary uses resembling, TV sets.

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COMMENTS OF MEDIA ACCESS PROJECT AND THE CENTER FOR DEMOCRACY AND TECHNOLOGY

Media Access Project and the Center for Democracy and Technology ("MAP and CDT") respectfully submit these comments for the limited purpose of addressing one small - but very important - issued raised in this docket.

MAP and CDT ask that the Commission unambiguously declare that:

the term "apparatus designed to receive television signals" as used in Section 551(c) of the Telecommunications Act of 1996 ("the Act")

1. ***applies only to devices capable of receiving video programming which***
   - a. ***is received from broadcast television stations, low power television stations, television translator and booster stations, Multipoint Distribution Services, Direct Broadcast Satellite Services, cable television systems or open video systems; and***
   - b. ***contains a vertical blanking interval; and***
   - c. ***includes on its vertical blanking interval ratings signals transmitted pursuant to Section 551(b)(1) of the Act or such voluntary ratings systems as the Commission may recognize pursuant to Section 551 (e)(1) of the Act;***

   and
2. ***does not apply to computers and other devices without over-the-air television reception capability, to computers sold without monitors, or to 'plug-in' circuit boards.***

These comments are necessitated by an unfortunate - and evidently unintended -ambiguity in ¶22 of the Commission's October 1, 1997, *Notice of Proposed Rulemaking*, FCC 97-340 (*"NOPR"*), which proposes rules to implement the technical aspects of the "V-chip" program

blocking requirements established in Sections 551(c), (d) and (e) of the Act. That paragraph might be construed to suggest that the Commission intended to define the statutory term "television receivers" broadly, so as to include computers, add-on computer hardware and other devices which are not designed to be video programming reception devices.

The Commission's needlessly confusing language has - understandably - given rise to legitimate concerns that the mechanism provided in Section 551 might provide a technological platform for subsequent efforts to impose a ratings scheme upon the Internet or other data networks. MAP and CDT do not understand the Commission to have proposed any such construction. Moreover, the Commission has previously construed functionally identical language in the Communications Act of 1934 in a manner which would allow such action.

These comments, then, are submitted for the purpose of obtaining an unambiguous Commission ruling which affirmatively rejects and renounces any intention that Section 551 can be applied to devices other than those which meet a contemporaneous and commonly understood description of a television receiver used to obtain video service from over-the-air television stations or from multi-channel video providers in existence as of this time.

Leaving aside the certain unconstitutionality of the application of a scheme like that contained in Section 551 to computers and to unregulated data networks, it would be for Congress, and not the FCC, to attempt a Quixotic venture of that nature. The language of the statute, Congressional intent underlying its enactment, the statutory scheme of Section 551, and the overall policy objectives of the 1996 Act all preclude the Commission from stretching a law designed to apply only to TV sets to encompass devices which might have incidental similarity to, and/or secondary uses resembling, TV sets.

I. THE PLAIN LANGUAGE OF SECTION 551 AS CONFIRMED BY PRIOR FCC AND JUDICIAL CONSTRUCTION, AND ITS LEGISLATIVE HISTORY SHOW THAT CONGRESS DID NOT GIVE THE COMMISSION AUTHORITY TO MANDATE INCLUSION OF V-CHIP CIRCUITRY IN DEVICES WHICH CANNOT RECEIVE OVER-THE-AIR TELEVISION SIGNALS.

Section 551 prohibits the interstate transport of television receivers ("apparatus designed to receive television signals") which do not include "V-chip" technology capable of detecting and blocking programming containing signals indicating that particular program content ratings have been assigned to it.[1]

At ¶22 of the *NOPR*, the Commission proposes that the program blocking provisions of Section 551

> should apply to any television receiver..., regardless of whether it is designed to receive video programming that is distributed only through cable television systems, MDS, DBS, or by some other distribution system.

The inclusion of the vague and general term "some other distribution system" might require installation of "V-chips" in many devices which fall far outside the scope of Section 551. Any such reading of the statute would be based on a misconstruction of the plain language of Section 551. It would incorrectly define as "television receivers" machines which are not "designed to receive television" signals from broadcast television stations, cable operators or satellite delivered program networks, and which are not under any legal or ordinary meaning of the term "television receivers."

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[1]These comments necessarily assume, *arguendo,* that 47 USC §330 is itself constitutional. MAP and CDT do not here address the constitutionality of the law on its face or as it may be applied.

A. The Plain Language Of Section 551 Applies Exclusively To Devices Designed To Receive Over-the-Air Broadcast Television Programming.

Section 551 is about television. It is titled "Parental Choice in Television Programming." Its findings begin in Section 551(a)(1) with the conclusion that "Television influences children's perceptions...." Section 551(b) establishes a "Television Rating Code." Section 551(c) is a "Requirement For Manufacture Of Televisions That Block Programs." The title of the final provision, Section 551(d), is "Shipping Of Televisions That Block Programs."

1. *Computers Are Not "Designed to Receive Television Signals."*

Immediately at issue here is Section 551(c), which adds a new Section 303(x) to the Communications Act directing the Commission to:

> Require, in the case of an apparatus designed to receive television signals..., that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating,....

Section 551(d) prohibits interstate shipment of non-complying equipment.

It is simply impossible to construe Section 551 as giving the Commission jurisdiction to prohibit shipment of computers and other devices which are not "televisions" in the ordinary meaning of that word.

First, the term used in Section 551(c), "television signals," clearly describes only devices that receive transmissions which are delivered directly over-the-air or by cable-delivered retransmission. Monitors, computers and other devices with video screens display video information, but they do not receive "television signals."

Second, as is discussed below, the statutory phrase "designed to receive television" indubitably applies only to television receivers equipped to receive signals of all over-the-air television stations. Prior to enactment of Section 551, the Commission's construction of that term was judi-

cially approved, and then reapplied. Since Section 551 uses the same words, and places the "V-chip" provision in the same section of the Communications Act - Section 330 of Title 47 - the Commission must give it the same meaning here.

Third, the statutory findings contained in Section 551(a) extensively and exclusively refer to video programming delivered by broadcast or cable television transmission, and do not mention other means of delivery. For example, Congress found that "television...influences children's perceptions...," Section 551(a)(1), that programmers "should take into consideration that television broadcast and cable programming has established a uniquely pervasive presence...," Section 551(2), that children watch "11 hours of television a day...," Section 551(a)(3), and that children are exposed to numerous violent acts and programming dealing with sexual matters "on television." Sections 551(a)(5)-(6).[2]

Finally, the ratings provisions of Section 551 have no possible application to, and have not been implemented with respect to, programming other than programming which is produced for distribution by over-the-air television and cable. The extensive private sector effort to develop a voluntary system to provide program ratings which would meet the standards established in Section 551(e) was designed by, and intended only for use by, video program producers of broadcast and cable programming - the National Association of Broadcasters, the Motion Picture Association of America and the National Cable Television Association. *See, Commission Seeks Comment on Industry Proposal for Rating Video Programming*, 12 FCCRcd 3260 (1997). Members of the Commission and Congress, the industry and the public involved in the discussions over

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[2]Here again, in quoting these findings to show Congressional intent, MAP and CDT do not endorse the validity or relevance to these findings to any permissible governmental objective.

these ratings disagreed about many things, but none of them have ever indicated that it would be possible to extend that system to cover other kinds of programming.

2. *Computers And Other Video Devices Are Incapable of Utilizing the Technology Mandated By Section 551.*

The technical description of the blocking mechanism mandated in Section 551 could not possibly apply to computers or video devices other than television receivers. In particular, Section 551(d)(3) provides that

> The rules prescribed by the Commission under this subsection...shall require that all such apparatus be able to receive the ratings signals which have been transmitted by way of line 21 of the vertical blanking interval....

This language has particular significance, since it tracks *verbatim* the language of 47 USC §330(b), to which Section 551(d) has been appended.[3]

The reference to "line 21" has meaning only in the context of television sets manufactured under the NTSC protocols used for over-the-air and cable television transmission. Computers and other devices which show video images do not employ the NTSC standard, and (depending on technology) may not necessarily have a "vertical blanking interval" at all, much less one with a "line 21" reserved for certain kinds of captioning and other such information.

B. The Courts And The FCC Have Already Interpreted Language Identical To That Contained In Section 551 As Being Restricted To Programming Received By Over-the-Air Signals.

By its terms, the V-chip requirement of Section 551 applies only to "apparatus *designed* to receive television signals." (emphasis added). While the Commission has correctly observed that "personal computers are already being sold with the *capability* to view television and other

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[3]Section 330(b) specifies that closed captions for television programs be "transmitted by way of line 21 of the vertical blanking interval."

video programming," (emphasis added) that does not mean that those devices were "*designed* to receive television" programming.

On two separate occasions, involving two different statutes, the Commission has conclusively interpreted the term "designed to receive television" as used in Section 551(c) to preclude its extension to devices other than television receivers. *See* discussion of §§303(s), (u), below; Sutherland on Statutory Construction, §46.05 (1992)("a statutory subsection...must be considered in reference to the statute as a whole and in reference to statutes dealing with the same general subject matter"). The United States Court of Appeals has affirmed this analysis. It is axiomatic that "if the term utilized has a settled legal meaning," the Commission must "incorporate the established meaning." Sutherland on Statutory Construction, §46.04 (1992).

1. ***The All Channel Receiver Act***

The All-Channel Receiver Act of 1962 was enacted to facilitate UHF television service by requiring that all TV sets be equipped to receive UHF channels. Prior to that time, most viewers had to purchase and install set-top converter devices. Congress determined that this was a major impediment to acceptance of UHF television.

In that statute, Congress authorized the Commission to require that "apparatus designed to receive television pictures broadcast simultaneously with sound" be able to receive all allocated VHF and UHF channels. 47 USC §303(s). The Commission adopted rules which interpreted this language as applying to "TV broadcast receivers," 47 CFR §§15.117(a), 119(a), which it defines as "[a] device designed to receive television pictures that are broadcast simultaneously with sound on the television channels under [CFR] Part 73." 47 CFR §15.4(w).

With the development of VCRs, video games, computers and other devices that deliver

video transmission to a TV monitor using a channel 3 or 4 modulator, a TV manufacturer sought to market a TV set which had a tuner equipped only to receive those channels. This "specific signal display device" ("SSDD"),[4] had no need to receive over-the-air or cable delivered signals, since the devices to which it was attached either transmitted a signal of their own or had their own all-channel tuner (as in the case of most VCRs).[5]

Because the All-Channel Receiver Act might have been construed to prohibit interstate transport of the SSDD devices, the Commission found it necessary to confront the question of whether an SSDD is a television receiver, *i.e.,* an "apparatus designed to receive television" within the meaning of 47 USC §303(s). It ruled that the SSDD is not such a device:

> We believe that the All Channel Act addresses receivers that are designed for reception of broadcast transmissions. This receiver, quite simply, is not intended for reception of over-the-air signals. (Indeed,...no built-in antenna will even be provided.) That the...receiver has any tuner at all is only because cable systems, computers and the like are designed, at present, to feed traditional television receivers on a TV broadcast frequency amenable to them....[W]e conclude that...the mere fact that [the] device will incidentally accept the signals of 2 VHF frequencies does not make it a "television receiver" subject to our All Channel requirements.

Limited Reception Television Receiver, 56 RR2d 681, 683 (1984), *recon. denied, Limited Reception Television Receiver*, 56 RR2d 681 (1984), *aff'd, Association of Maximum Service Telecasters*

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[4]"The SSDD is a display device designed to produce an audiovisual output via its cathode ray picture tube and loudspeaker when driven by an input signal comprising a VHF carrier signal modulated by an NTSC-format (standard television) composite video signal." *Sanyo Manufacturing Corp.*, 58 RR2d 719, 719 n.1 (1985), *aff'd, Association of Maximum Service Telecasters v. FCC*, 853 F.2d 973 (D.C. Cir. 1988).

[5]With respect to the V-chip, the Commission has pointed out that "because VCRs generally record the line 21 information along with the program, it would appear that the blocking technology that is contained in the television receiver would block the viewing of that program when it is played back at a later time." *NOPR*, ¶24. The Commission has indicated that it may prohibit devices which "could be used...to defeat the blocking technology." *Id.*

v. FCC, 853 F.2d 973 (D.C. Cir. 1988).

The United States Court of Appeals for the District of Columbia affirmed,[6] accepting the FCC's argument that "a device is only 'designed' to be a television receiver if it is 'intended' to perform the functions of a receiver, regardless of its potential technical capacity." *Id.* at 977. Although ordinary principles of judicial deference do not require that a reviewing court must agree that the agency's interpretation is the best one available, *id.* at 979, *citing K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 292 (1988), in this case the Court of Appeals did believe that the FCC had the better reading, *id.*, because

> [i]f Congress, in drafting section 303(s), had wanted the Act to encompass all devices 'capable' of receiving television broadcasts, surely it could have employed that term in that specific context. But it did not do so....

Id., 853 F.2d at 978.

Whatever ambiguity may have attached to the term "designed to receive television" prior to 1988, its precise statutory meaning was established at that point. Contrary to the proposal contained at ¶22 of the *NOPR*, the fact that "personal computer systems,...are already being sold with the capability to view television and other video programming," does *not* make them "apparatus designed to receive television signals." To the contrary, the FCC and the Court of Appeals have said that such devices are "designed to receive television" only when they are "intended" to be used for that purpose. As was the case with 47 USC §303(s), if Congress had wished to mandate that computers and other devices "capable" of receiving television broadcasts be covered in 47 USC §303(x), "it could have employed that term in that specific context."

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[6]The case was initially remanded for procedural reasons not relevant here. *Association of Maximum Service Telecasters v. FCC*, 791 F.2d 207 (D.C. Cir. 1986).

2. *The Television Decoder Circuitry Act*

In the Television Decoder Circuitry Act of 1990, Congress used the same terminology previously employed in the All Channel Receiver Act to set forth the new requirement that closed captioning circuitry be installed in "apparatus designed to receive television" transmissions. 47 USC §303(u).

In 1995, the Commission was asked to interpret these requirements, which had been implemented in 47 CFR Chapter 15, "as they apply to computers that have the capability to receive television signals." It ruled that

> The requirements of Section 15.119 do not apply to:
>
> - Computers or computer systems that do not have the capability to receive TV broadcast signals;
> - Computers sold without monitors; **** or,
> - Separate "plug-in" circuit boards.

Public Notice, Closed Captioning Requirements for Computer Systems Used as Television Receivers, 11 FCCRcd 4455, 4456 (1995) ("*Public Notice*").

The Commission noted that computers could be "equipped to receive and display broadcast television programming," but it found that Section 303(u) contains limited authority which extends only to those monitors that "receive television service" and are able to "display closed captioning transmitted on television signals." *Id.*

As in the earlier All Channel Receiver Act, the same terminology now used in Section 551 was held not to extend generally to computers, add-on peripheral "plug-in" circuit boards or other devices that do not receive over-the-air broadcast signals directly or via cable.

C. The Legislative History Shows That Congress Only Contemplated Sets That Display Over-the-Air Signals.

In light of the clear meaning of the plain language employed in Section 551, there is no need to resort to legislative history to establish Congressional intent. Indeed, given the history of the interpretation of the terms by the FCC and the Court of Appeals, explicit and unambiguous Congressional statements of a such an intent would have been needed to give the words a different meaning.

However, the legislative history of Section 551 contains nothing that would support any intention to overrule or distinguish the established interpretations of the same language in the All Channel Receiver Act and the Television Decoder Circuitry Act. To the contrary, every word written or spoken in floor debate reflects a clear Congressional focus upon over-the-air television programming and television sets designed to receive it. The Conference Report discusses only "televisions" and "sets" and requires that ratings information be "transmit[ted]" on "broadcast signals." H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 195-96 (1996). It does not mention, much less differentiate, previous interpretations of the identical statutory language. The Conference Report's similarly-phrased descriptions of the final House and Senate bills describe rules that would permit "TV broadcasters" and "cable systems" to "transmit" ratings to viewers, H.R. Conf. Rep. at 194, and technical requirements that would be applied only to "TV manufacturers" and "sets." *Id.*

II. THE COMMISSION SHOULD NOT EXTEND "V-CHIP" REQUIREMENTS TO A NEW MEDIUM WHERE THEY ARE PARTICULARLY INAPPROPRIATE AND RUN CONTRARY TO THE GOALS OF THE 1996 ACT AND THE STATED INTENT OF CONGRESS.

Their remarkable potential to enhance free expression makes the new digital interactive

media - best typified by today's Internet - deserving of the highest level of First Amendment protection and freedom from regulation. As the Supreme Court said in its first declaration noted about the Internet,

> Any person with a phone line can become a town crier with a voice that resonates further than it could from any soapbox....[O]ur cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.

Reno v. ACLU, 117 S.Ct. 2329, 2344 (1997). Whatever may be held about the constitutionality of the "V-chip" requirement for television receivers, on its face or as applied, it is certainly inapposite to these new digital media.

The broad language of the *NOPR* would place the Commission squarely in the position of appearing to extend the "V-chip" from the broadcast media into the new digital interactive media - wholly different media than the television systems for which the "V-chip" was uniquely designed. New digital interactive media have different characteristics which make the "V-chip" particularly inappropriate. Such regulation of these new media is more likely to thwart the ultimate goals of Congress in promoting the "V-chip," and is contrary to the expressed intent of Congress regarding regulation of the Internet.

A. Regulation of Personal Computers Would Extend Program Blocking Requirements Into a Wholly Different Medium.

To extend the "V-chip" blocking requirements beyond the traditional television media they were designed to regulate, as is suggested at ¶22 of the *NOPR,* it would first have to find a way to twist the clear statutory language of Section 551 discussed in Section I above. It would then encounter insurmountable constitutional obstacles.

The Commission said that:

We believe that the program blocking requirements we are proposing should apply to any

> **television receiver meeting the screen size requirements, regardless of whether it is designed to receive video programming that is distributed only through cable television systems, MDS, DBS, or by some other distribution system.**

NOPR, ¶22. To the extent that the phrase "some other distribution systems" were to be applied to delivery of video signals through new interactive digital networks - typified today by the Internet - or in ways that can be manipulated through a computer's processing capabilities, the requirements would take an unprecedented step. Regulation of the new interactive digital media with their wholly different characteristics is beyond the purview of the FCC.

Extension of the "V-chip" requirements to delivery of video through computers would place the Commission squarely in the position of regulating the Internet and other new interactive digital media. Video is an increasingly prevalent feature of the new digital interactive media.[7] Today's "multimedia" personal computers are designed to easily receive and process video files based on standards such as MPEG, or through "streaming video" products such as Progressive Networks' RealVideo™. Video clips are readily exchanged through the World Wide Web, news groups, or other services provided by Online Service Providers. Popular applications are being designed to include "imbedded" video in word processing files, email, or other data. Extension of the "V-chip" to delivery of digital video to PCs would directly affect a large portion of this new media.

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[7]The rise of multimedia computing has been documented in dozens of trade journals and the popular press. *See, e.g.,* Denise Caruso, *Will Video Ever Truly Work on the Internet?*, N.Y. Times, Feb. 10, 1997, at D5; Robert Reid, *Real Revolution*, Wired, Oct. 1997, at 122 (profiling efforts of Progressive Networks to "transform the Net into a mass-market conduit of video content").

B. New Interactive Digital Media Have Radically Different Technical Characteristics That Make the "V-Chip" Particularly Inappropriate.

Essential technical features of computers and the new digital media make them especially different from traditional broadcast television for the purposes of the "V-chip." ***Processing*** capabilities of computers allow their users to manipulate video and to create new tools for analyzing video content. ***Interactivity*** gives computer users new capabilities to select or screen out video programming. And delivery networks such as the Internet have low distribution costs without the spectrum scarcity of the broadcast world, creating an ***abundance*** of programming and new possibilities for access. The most familiar manifestation of the new interactive digital media is the Internet, which the Supreme Court noted itself "is 'a unique and wholly new medium of worldwide human communication.'" *Reno v. ACLU*, 117 S.Ct at 2334.

These new features obviate the purported rationale for the "V-chip" in the traditional television media. With the "V-chip," Congress sought to cure the lack of parental control created by the "uniquely pervasive nature" of television broadcasting. Section 551(a)(2). Regardless of whether the "V-chip" is a constitutionally sound and substantively appropriate policy response to legislative concerns regarding television, the rationale underlying it does not apply to the new digital media. On the contrary, the interactivity and processing capabilities of personal computers give users a great deal of control over what they see and how they see it. "Unlike communications received by radio or television, 'the receipt of information on the Internet requires a series of affirmative steps more deliberate and directed than merely turning a dial.'" *Reno*, 117 S.Ct. 2336. The abundance of content available online gives users far greater personal choice about what content they or their children will access. The new digital media are far from the pervasive

and uncontrollable television media about which Congress was concerned.

The federal government has a long history of recognizing the differences in media and regulating them appropriately. The federal courts have already spoken eloquently on the unique characteristics of the Internet and other new digital media that require a different standard for regulation than broadcast television or telecommunications.[8] The Commission should follow this important tradition and avoid the burdensome regulation of the "V-chip" in this new medium as well.

C. Extension of the "V-chip" Would Thwart the Very Goal of Greater Parental Control That Was the Intent of the "V-chip" Statute.

The ostensible goal of Section 551 is to promote greater parental control over television. In fact, parents are already likely to have far better control over all kinds of content - including text, audio, or video - without invasive regulation such as the "V-chip." The "V-chip" requirements for television have already been criticized for providing a highly limited form of control to parents. Were it to be employed in the new digital media, the "V-chip" is even more likely to stifle parental control - as well as free expression - by imposing a highly limited system on a new medium that has much more expansive possibilities.

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[8]In striking down the so-called "Communications Decency Act" provisions of the 1996 Act, the Supreme Court held that:

> [S]ome of our cases have recognized special justifications for regulation of the broadcast media that are not applicable to other speakers....In these cases, the Court relied on the history of extensive government regulation of the broadcast medium...the scarcity of available frequencies at its inception,...and its "invasive" nature....
>
> Those factors are not present in cyberspace. Neither before nor after the enactment of the CDA have the vast democratic fora of the Internet been subject to the type of government supervision and regulation that has attended the broadcast industry. Moreover, the Internet is not as "invasive" as radio or television.

Reno, 117 S.Ct. at 2343 (citations omitted).

The Internet and other new digital media offer rich new opportunities for people to find and select content, including video programming. New tools are being created to help people locate the content they want to see.[9] Libraries and educational groups are developing collections of materials of superior value, especially for children. To the extent individuals may choose to avoid content they find undesirable, technology will offer highly flexible options based on a multitude of value systems which reflect the private choices of the individual user. All of these systems are rapidly evolving, without regulation, to meet the needs of computer users and changes in technology.

By contrast, the "V-chip" utilizes a limited and static ratings system which must fit within a specified format. In Section 551(c), Congress specifically called for a common "television rating code" for use in the "V-chip." The development of a similar voluntary rating system for television today has already proved highly problematic, creating industry dissension and viewer confusion that has impaired whatever utility such systems may have.[10] Although the Commission may seek to implement several ratings systems for the "V-chip," the inherent limitations of this approach guarantees that these systems will be far less flexible than those available to users of interactive computer systems.

Application of the "V-chip" to personal computers and the Internet would preempt the possibilities available in the new media with the problematic standard of television. Such a move

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[9]For a general overview of the scope and availability of user controls on the Internet, *see* Center for Democracy and Technology, *Internet Family Empowerment White Paper: How Filtering Tools Enable Responsible Parents to Protect Their Children Online* (1997) (available on the World Wide Web at: *http://www.cdt.org/ciec*).

[10]*See, e.g., NBC and Some Powerful Politicians Square Off Over the New Ratings System*, N.Y. Times, Oct. 6, 1997, at D1.

would chill the development of new tools for accessing content online and the media's new possibilities to achieve Congress's ultimate goal - but more effectively, less expensively, and with less burden on free expression.

D. Congress Specifically Discouraged Regulation of the Internet of the Sort Now Contemplated by the Commission

In passage of the Telecommunications Act of 1996, Congress specifically discouraged the sort of regulation of the Internet that expansion of the "V-chip" to personal computers would require.

Section 551 has no reference to the Internet, and is clearly directed at traditional video programming content. Congress, however, spoke at length to the Internet elsewhere in the 1996 Act. At that point, it found that Internet and interactive computer services "represent an extraordinary advance in the availability of educational and informational resources to our citizens" and "offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity." 47 USC §§230(a)(1)-(a)(3). Congress specifically found that "these services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops." 47 USC §230(a)(2).

Congress' preferred approach for promoting the potential of the Internet has been a hands-off policy for the federal government. "The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation." 47 USC §230(a)(2). As codified in the Act, it is "the policy of the United States...to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 USC §230(b)(2).

These Congressional policy statements are antithetical to the expansion of the "V-chip" requirements to the Internet and other new interactive digital media. This stated intent of Congress, taken together with the characteristics of the new media, the control available to individuals, and the negative effect of "V-chip" requirements on that user control, all support a clear statement from the Commission unambiguously limiting the scope of the "apparatus designed to receive television signals" as used in Section 551 of the 1996 Act.

CONCLUSION

Section 551 governs manufacture of television sets, not computers. It is motivated by concerns about the broadcast medium, not the Internet. The Commission should disavow suggestions in the *NOPR* which might appear to expand the scope of Section 551.

Respectfully submitted,

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